

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and)	
NCR CORPORATION,)	
)	
Plaintiffs,)	
v.)	No. 08-CV-16-WCG
)	
GEORGE A. WHITING PAPER COMPANY,)	
ET AL.,)	
Defendants.)	

NCR CORPORATION,)	
)	
Plaintiff,)	
v.)	No. 08-CV-0895-WCG
)	
KIMBERLY-CLARK CORPORATION,)	
ET AL.,)	
Defendants.)	

DECLARATION OF EDWARD GALLAGHER

I, Edward Gallagher, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and registered as an in-house attorney in New York State. I am employed as a Law Vice-President at NCR Corporation. I have personal and first-hand knowledge of each of the matters set forth herein, and, if called and sworn as a witness, I can and will testify competently thereto. The contents of this declaration are true and correct to the best of my knowledge, information and belief, and/or corporate records maintained by NCR.

2. I submit this declaration in support of NCR Corporation's Response to Defendant Georgia-Pacific LLC's Motion for Sanctions Against Plaintiff Appleton Papers Inc., DeWitt Ross & Stevens S.C., and Hermes Law Ltd.

3. NCR never owned the Butler's Court facility from which these documents originated.

4. NCR has never seen, had physical possession of, or ever been given access to the original paper documents or microfiche maintained at, or obtained from, the Butler's Court facility.

5. NCR has also never had any ability to control the paper documents or the microfiche from the Butler's Court facility. In particular, NCR is not aware of any agreement, nor any law or legal theory, that gives NCR the legal right to any documents controlled by Wiggins Teape, API, Appleton Coated LLC ("Appleton Coated"), or counsel for any of these entities.

6. NCR first learned that there may be relevant documents at the Butler's Court facility on April 7, 2009, when NCR's counsel received a letter from counsel for Georgia-Pacific ("GP") referring to these documents. I received a copy of this letter.

7. Counsel for NCR responded to GP's April 7, 2009 correspondence by informing GP that NCR did not have any legal right to or obligations with respect to documents in the possession or control of Wiggins Teape. Wiggins Teape is a third-party that is unrelated to NCR, and that has never been an NCR affiliate. NCR's counsel further stated that there were no contractual provisions giving NCR ongoing access to documents in the possession or control of Wiggins Teape. Attached as Exhibit A is true and correct copy of the letter sent by NCR's counsel on April 10, 2009 responding to GP's letter of April 7, 2009. I had approved the content of this letter.

8. NCR first learned of the alleged destruction of the paper documents from the Butler's Court facility when it received a letter dated May 5, 2009, signed by counsel for GP.

9. On May 6, 2009, Ernest Getto (counsel for GP) sent an email to Kathy Roach (counsel for NCR) requesting that NCR “take all necessary steps to preserve these records.” I received a copy of this email. On May 7, 2009, Ms. Roach responded that NCR has no existing corporate relationship with any of the relevant entities and no control over the Butler’s Court materials. Ms. Roach further stated that notwithstanding these limitations, NCR had asked API to request that “the records be preserved indefinitely (until the issue has been finally resolved either in the US or the UK) at a solicitor’s office in England.” Ms. Roach also informed GP that NCR had no additional information regarding the alleged destruction of the Butler’s Court hard copy documents, other than what was contained in the materials provided to NCR by GP. Attached as Exhibit B is a true and correct copy of Ms. Roach’s May 7, 2009 e-mail. I reviewed and approved this response.

10. The first time NCR saw any of the paper documents or microfiche from the Butler’s Court facility was in September 2009 when NCR’s counsel was sent electronic images of the Butler’s Court microfiche by Hermes Law Ltd. All together, NCR’s counsel received 65,026 images of documents, bates numbered BCFOX000000001 – BCFOX00065026.

11. NCR’s counsel received the same set of images that GP received, and to NCR’s knowledge did not receive any images or databases beyond what GP received. To NCR’s knowledge, these images were received in each instance *after* they had been produced to GP.

12. NCR first learned about the alleged destruction of the microfiche and other Butler’s Court materials on June 22, 2011, when NCR’s counsel received a call from counsel for Appleton Coated. I was apprised of this call. Appleton Coated formally advised the Court of this fact the next day.

13. Prior to that time, NCR did not have any information about the whereabouts of the microfiche from the Butler's Court facility. NCR never knew that the microfiche had been returned to the United Kingdom or that the microfiche had been sequestered due to a tariff dispute, as Appleton Coated recently reported.

14. NCR's counsel received additional electronic images of the Butler's Court microfiche from a vendor for Hermes Law Ltd. on August 2, 2011 and August 18, 2011. As before, to NCR's knowledge, NCR's counsel received the same set of documents that GP received, *after* GP received them, and did not receive any documents or databases beyond those produced to GP.

15. NCR's counsel received a duplicate set of the Butler's Court microfiche images from GP on August 9. Together with these images, GP also produced to NCR's counsel a Microsoft Office Access Database that it had received from Hermes Law Ltd. This is presumably the "indexing database" referenced in the third bullet on page 1 of GP's memorandum. Prior to this date, neither NCR nor its counsel had ever seen or had access to this database. To NCR's knowledge, it was not included in any productions from API to NCR.

16. Neither NCR nor its counsel were part of any discussions with any person about destroying any materials from the Butler's Court facility (other than the communications referenced in paragraphs 8 and 12, above), and NCR was not aware of any destruction, loss, damage to, or other disposition of the Butler's Court microfiche.

17. Attached as Exhibit C is a true and correct copy of an April 15, 2009 Letter from Kathy Roach, counsel for NCR, to Karl Lytz, counsel for GP, confirming that no agreement between NCR and API gives NCR any "legal right" to API's documents.

18. Attached as Exhibit D is a true and correct copy of a September 13, 2011 letter from Evan Westerfield, counsel for NCR, to Mary Rose Alexander, counsel for GP, explaining that the laboratory notebooks produced in August 2011 were not produced earlier because they did not contain information responsive to the Phase I discovery requests.

19. Attached as Exhibit E is a true and correct copy of relevant excerpts from the deposition of Fred Heinritz, taken on June 22, 2010.

20. Attached as Exhibit F is a true and correct copy of the affidavit of Fred Heinritz, prepared on March 26, 2010.

21. Attached as Exhibit G is a true and correct copy of an e-mail sent on March 4, 2011 by Darin McAtee, counsel for NCR, to Douglas Garrou, counsel for GP, offering to stipulate that “the documents that were produced by Appleton Coated in response to the subpoena in the Whiting Litigation under Bates prefix ‘BCFOX’ are in fact accurate copies of the originals contained on the microfiche referenced in your subpoena.”

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Edward Gallagher

Edward Gallagher

October 3, 2011

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2011, I electronically filed the Declaration of Edward Gallagher using the ECF system, which will send notification of such filing to: Philip Munroe at DiRenzo & Bomier LLC, pmunroe@direzollc.com; Scott Fleming at Weiss Berzowski Brady LLP, sbf@wbb-law.com; David Mandelbaum at Greenberg Traurig, LLP, mandelbaumd@gtlaw.com; Marc Davies at Greenberg Traurig, LLP, daviesm@gtlaw.com; Sabrina Mizrachi at Greenberg Traurig, LLP, mizrachis@gtlaw.com; Monique Mooney at Greenberg Traurig, LLP, mooneym@gtlaw.com; Caleb Holmes at Greenberg Traurig, LLP, holmesc@gtlaw.com; Adam Silverman at Greenberg Traurig, LLP, silvermana@gtlaw.com; Philip Hunsucker at Hunsucker Goodstein & Nelson PC, phunsucker@hgnlaw.com; David Rabbino at Hunsucker Goodstein & Nelson PC, drabbino@hgnlaw.com; Allison McAdam at Hunsucker Goodstein & Nelson PC, amcadam@hgnlaw.com; David Edquist at von Briesen & Roper, s.c., dedquist@vonbriesen.com; Christopher Riordan at von Briesen & Roper, s.c., criordan@vonbriesen.com; Patrick Wells at von Briesen & Roper, s.c., pwells@vonbriesen.com; Russell Wilson at Ruder Ware, rwilson@ruderware.com; Linda Benfield at Foley & Lardner LLP, ibenfield@foley.com; Sarah Slack at Foley & Lardner LLP, sslack@foley.com; Paul Bargren at Foley & Lardner LLP, pbargren@foley.com; Howard Iwrey at Dykema Gossett PLLC, hiwrey@dykema.com; Joseph Basta at Dykema Gossett PLLC, jbasta@dykema.com; Daniel Murray at Johnson & Bell, Ltd., murrayd@jbltd.com; Garrett Boehm, Jr. at Johnson & Bell, Ltd., boehmg@jbltd.com; Frederick Mueller at Johnson & Bell, Ltd., muellerf@jbltd.com; John Cermak, Jr. at Baker & Hostetler LLP, jcermak@bakerlaw.com; Sonja Inglin at Baker & Hostetler LLP, singlin@bakerlaw.com; Timothy Anderson at Remley & Sensenbrenner, S.C., tanderson@remleylaw.com; Thomas O'Donnell at Calfee Halter & Griswold LLP, todonnell@calfee.com; William Coughlin at Calfee Halter & Griswold LLP, wcoughlin@calfee.com; Ted Waskowski at Stafford Rosenbaum LLP, twaskowski@staffordlaw.com; Richard Yde at Stafford Rosenbaum LLP, ryde@staffordlaw.com; Meg Vergeront at Stafford Rosenbaum LLP, mvergeront@staffordlaw.com; Paul Kent at Anderson & Kent, S.C., pkent@staffordlaw.com; James P. Walsh at the Appleton City Attorney's Office, jim.walsh@appleton.org; Lora L. Zimmer at Hinshaw & Culbertson LLP, zimmer@hinshawlaw.com; William Mulligan at Davis & Kuelthau, s.c., wmulligan@dkattorneys.com; Kevin Lyons at Davis & Kuelthau, s.c., klyons@dkattorneys.com; Tara Mathison at Davis & Kuelthau, s.c., tmathison@dkattorneys.com; Elizabeth Miles at Davis & Kuelthau, s.c., emiles@dkattorneys.com; Thomas Schrimpf at Hinshaw & Culbertson LLP, tschrimpf@hinshawlaw.com; Ian Pitz at Michael Best & Friedrich, LLP, iapitz@michaelbest.com; Anthony S. Wachewicz, III at City of Green Bay, tonywa@ci.green-bay.wi.us; Ted Warpinski at Friebert, Finerty & St. John, S.C., taw@ffsj.com; S. Todd Farris at Friebert, Finerty & St. John, S.C., stf@ffsj.com; M. Andrew Skwierawski at Friebert, Finerty & St. John, S.C., mas@ffsj.com; Scott Hansen at Reinhart Boerner Van Deuren s.c., shansen@reinhartlaw.com; Steven Bogart at Reinhart Boerner Van Deuren s.c., sbogart@reinhartlaw.com; John Van Lieshout at Reinhart Boerner Van Deuren s.c., jvanlieshout@reinhartlaw.com; David Frank at Reinhart Boerner Van Deuren s.c., dfrank@reinhartlaw.com; Thomas Gottshall at Haynsworth Sinkler Boyd, P.A., tgottshall@hsblawfirm.com; Stephen McKinney at Haynsworth Sinkler Boyd, P.A., smckinney@hsblawfirm.com; William Harbeck at Quarles & Brady LLP, william.harbeck@quarles.com; Nancy Peterson at Quarles & Brady LLP,

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/s/ Evan B. Westerfield

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